

REMARKS

Double Patenting

The Office Action provisionally rejected claims 25-36 and 38-40 under the judicially created doctrine of obviousness-type double patenting over claims 1-6, 8-11, 17 and 19 of copending application no. 10/815356. Applicants traverse this rejection and request reconsideration. A double patenting rejection of the obviousness-type is “analogous to [a failure to meet] the nonobviousness requirement of 35 U.S.C. 103” except that the patent principally underlying the double patenting rejection is not considered prior art. *In re Braithwaite*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967). Therefore, any analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. 103 obviousness determination. *In re Braat*, 937 F.2d 589, 19 USPQ2d 1289 (Fed. Cir. 1991); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). Applicants submit that the rejection fails to establish a *prima facie* case of obviousness, and therefore the obviousness-type double patenting rejection is improper.

Nevertheless, to facilitate an early notice of allowance Applicants submit herewith a Terminal Disclaimer under 37 C.F.R. 1.321(c). While the terminal disclaimer now renders moot the obviousness-type double patenting rejection, Applicants traverse the rejection and reserve all rights and arguments.

Copending Applications

The Examiner should note the following copending United States patent applications:

<u>Application</u>	<u>Status</u>
10/815356	Response to Non-Final Office Action Entered and Forwarded to Examiner
10/943215	Notice of Allowance Mailed -- Application Received in Office of Publications
10/943214	Docketed New Case - Ready for Examination
10/943221	On Appeal -- Awaiting Decision by the Board of Appeals
10/943222	Response to Non-Final Office Action Entered and Forwarded to Examiner

10/943220	Patented Case - 7,785,294
11/217673	Patented Case 7,677,392
10/943218	Examiner's Answer to Appeal Brief Mailed
10/943213	Patented Case 7,597,701

The foregoing statuses were pulled from PAIR on 28-Apr-2011. The Examiner is encouraged to review each of these file wrappers, including the pending claims, all art of record, and any rejections. Details of these cases are available through PAIR and the Office's databases. No representation is made or intended that the foregoing cases are material to patentability of the present claims, or that the foregoing list is comprehensive.

Conclusion

Based on the foregoing, all of the pending claims are in a condition for allowance. While Applicants traversed the rejections on certain grounds, the Office should appreciate the claims may be patentable on other grounds not specifically addressed in this paper. Nothing herein shall diminish or preclude other reasons the claims are patentable, and Applicants reserve all rights and arguments under the law. Accordingly, Applicants traverse all rejections and request an early notice of allowability.

Respectfully submitted,

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